

AAWCO

ASSOCIATION OF AMERICAN WAREHOUSE CONTROL OFFICIALS (Founded in 1939)

October 3, 2001

Roger Hinkle, Chief
Licensing Authority Branch
Warehouse and Inventory Division
Farm Service Agency
United States Department of Agriculture
STOP 0553
1400 Independence Avenue, SW.
Washington, DC 20250-0553

Dear Roger,

We appreciate the opportunity to comment on the proposed rule pertaining to the United States Warehouse Act. We appreciate the amount of time and effort you and the USDA staff have put into this effort and trust you will find our comments have merit.

In response to the Implementation of the United States Warehouse Act; Proposed Ruling, the Association of American Warehouse Control Officials (AAWCO) would like to offer the following comments on Farm Service Agency 7 CFR Parts 735, 736, et al.:

Page 46318 - Section 735.401, Sub-Section (a)(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Maximum deductible amounts will be prescribed in the applicable provider agreement. Each policy must have a minimum coverage of \$4 million. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation;

AAWCO believes that the cost for the \$4 million "fraud and dishonesty" and the \$4 million "errors and omissions" policies with deductible provisions of a minimum of \$10,000.00, as stated in Exhibit C and Exhibit F may severely limit the participation of prospective providers. We recommend policies of \$2 million each with maximum deductible of \$50-75,000 would be adequate protection for a provider of electronic warehouse receipts.

Page 46318 - Section 735.402, Sub-Section (a)(1) Have and maintain a net worth of at least \$10 million;

AAWCO believes that a \$10 million net worth requirement on providers of other electronic documents is excessive and would severely limit the firms interested in participating as a provider. We recommend a \$1million net worth would be adequate for these providers.

Page 46318 - Section 735.402, Sub-Section (a)(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Maximum deductible amounts will be prescribed in the applicable provider agreement. Each policy must have a minimum coverage of \$25 million. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation;

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AAWCO believes that the cost of the \$25 million "fraud and dishonesty" and the \$25 million "errors and omissions" policies with deductible provisions of a minimum of \$10,000.00, as stated in Exhibit C and Exhibit F may severely limit the participation of prospective providers. We recommend policies of \$2 million each with maximum deductible of \$50-75,000 would be adequate protection for a provider of other electronic documents.

Page 46318 Section 735.402, Sub-Section (b)(2) Suspended or terminated providers may not execute any function pertaining to USWA documents or EWRs during the pendency of any appeal or subsequent to this appeal if the appeal is denied except as authorized by DACO.

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AAWCO believes this section should read: Suspended or terminated providers may not execute any function pertaining to USWA documents or EWRs **issued under this act** during the pendency of any appeal or subsequent to this appeal if the appeal is denied except as authorized by DACO.

Exhibit F - Draft Provider Agreement To Electronically File And Maintain Other Electronic Documents -
Paragraph 3: If a non-negotiable document in a non-electronic format is presented to a provider for transmission in their CFS, the Provider may generate an electronic version of such document but must maintain custody of the original non-negotiable document except as is authorized by FSA.

AAWCO believes this paragraph should be deleted in its entirety. We recommend that providers should only be required to accept documents in electronic format and should not be required or allowed to enter documents on behalf of any person that is unable to generate the document electronically himself.

Page 46318 Section 735.401 SubSection (c)(3) The provider or DACO may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to termination.

Page 46318 Section 735.402 SubSection (c)(3) The provider or DACO may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to termination.

AAWCO recommends that the notice of termination without cause should be increased to 90 days to allow issuers time to select an alternate provider.

AAWCO believes the \$9,000 Providers application and annual renewal fee to be exorbitant. We believe the requirements of an applicant and or Provider to submit to FSA an annual audited financial statement and electronic data processing audit that encompasses the provider's fiscal year to be a significant expense for the Provider. We would recommend application and renewal fees be reviewed in order to base them on the actual expense incurred by FSA in licensing and monitoring the Provider. We would recommend that initial start up fees not exceed \$5,000 for an application and \$2,500 for a renewal. Fees could then be adjusted as FSA is able to review their costs after monitoring the providers.

In addition, AAWCO believes that licensing of personnel to sample, inspect, grade or weigh grain should not be included under the USWA. It is ultimately the warehouseman's responsibility to provide the required weighing and grading equipment and staff training to weigh and grade grain, handled by the warehouse, in accordance with the United States Grain Standard Act. AAWCO recommends if "service licenses" for weighing and grading are to be issued that they be voluntary through the Federal Grain Inspection Service.

AAWCO is concerned with the current structure of the proposed rules that would allow FSA to make changes in the provider agreements without notice or comment prior to implementing those changes.

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AAWCO recommends that FSA, in an effort to be responsive to industry and state warehouse control agencies, establish a format for review and taking of comments regarding the proposed changes in the provider and licensing agreements including all parties that may be effected by those changes. Those parties affected would include state warehouse control agencies, regulated parties (licensees and Providers), and associations representing those parties. In addition, AAWCO would recommend that FSA conduct an annual meeting for licensees, providers, state warehouse control officials, any other parties that may be regulated by the act and any associations that would represent these parties to address ways to minimize fees, reduce costs, and more efficiently use available assets to effectively implement this act.

Respectfully Submitted,

Gary Graalman, President

John G. Steinhart, Chairman
AAWCO Computer Technology Committee

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